

(2013) 06 DEL CK 0013

Delhi High Court

Case No: Criminal Revision Petition 338 of 2013

Kartar Singh

APPELLANT

Vs

Major Murlidhar and  
Others

RESPONDENT

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Date of Decision: June 5, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145, 372, 448, 456(1)
- Penal Code, 1860 (IPC) - Section 34, 441, 448

Citation: (2013) 7 AD 231 : (2013) 3 JCC 1681

Hon'ble Judges: R.V. Easwar, J

Bench: Single Bench

Advocate: Kishore Gojoria, Mr. Vikram Gujral and Mr. Anil K. Gujral, for the Appellant; Anil Sapra, Mr. Gaurang Kanth and Ms. Snigdha Sharma, Advocates and Mr. Manoj Ohri, APP along with SI Pawan Kumar, P.S. Vasant Kunj, for the Respondent

Final Decision: Dismissed

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### Judgement

@JUDGMENTTAG-ORDER

R.V. Easwar, J.

CRL. M.A. 9248/2013

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CRL. REV. P. 338/2013

1. This is a criminal revision petition filed against the order dated 22.05.2013 passed by the Additional Sessions Judge, Patiala House Courts, New Delhi. The prayer in the petition is for setting aside the aforesaid order and for restoration of the order passed by the trial judge on 30.01.2013 on the application filed by the revision

petitioner u/s 456(1) of the Cr.P.C. in case FIR No. 164/1989. The present petition has been filed in the following circumstances. One Major Murlidhar, the respondent No. 1 herein, filed a complaint against Kartar Singh, the petitioner herein, his father Udai Ram and son Jai Prakash, which was registered at the Vasant Kunj police station on 02.09.1989 under sections 448/34 of the Indian Penal Code. The background of the complaint was this. Major Murlidhar had purchased a plot in village Rangpuri in the name of his wife Kamlesh, respondent No. 2 herein, and his mother Lakshmi Devi and put up a boundary wall, two rooms and a hand pump. They obtained the possession of the property from the sellers. However, Kartar Singh and his father and son claimed themselves to be the owners of the property and trespassed into the said land. A complaint was filed by Major Murlidhar alleging that Kartar Singh, his father and son had committed house trespass. The trial court convicted Kartar Singh by judgment dated 01.03.2008 and also passed an order of sentence on 14.03.2008. However, no order was passed u/s 456(1) of the Cr.P.C. restoring the possession of the property to Major Murlidhar. The order of conviction and sentence on Kartar Singh was not appealed against and thus became final.

2. Since the trial court did not pass an order on the application filed by Major Murlidhar u/s 456(1) of the Cr.P.C., an appeal was filed by him claiming relief u/s 456(1) belatedly. Since at that time there was no appeal provided against the refusal of the trial court to pass an order u/s 456(1), and in the light of section 372 of the Cr.P.C., the said appeal was withdrawn by Major Murlidhar on 05.06.2010.

3. On 10.06.2010, Major Murlidhar and his wife Kamlesh, the first and second respondents herein, filed an application before the trial court claiming repossession of the property u/s 456(1) of the Cr.P.C. This application was dismissed by the Metropolitan Magistrate (South) New Delhi by order dated 30.01.2013. According to the MM, even in the complaint there was no allegation of threat or use of force while trespassing. In the trial, though the complainant had deposed that there were threats extended to him by Kartar Singh, it was not recorded that such threats were issued in the course of the commission of the offence. The complainant, noted the MM, had deposed during the trial that he found that the plot had been forcibly taken possession of by Kartar Singh with the help of goondas but there was nothing in the deposition of the complainant to show upon whom the force was applied. He was not the eye witness to the use of force or threats allegedly extended at the time of the commission of the offence. The MM further noted that none of the witnesses had alleged that any force was used or threats issued in their presence when the offence was committed. In this understanding of the evidence led during the trial, the MM found himself unable to hold that the offence was attended by criminal force or show of force or criminal intimidation. The application was rejected.

4. Aggrieved, the respondents filed an appeal before the Additional Sessions Judge, Patiala House Courts, New Delhi in Criminal Appeal No. 17/2013. The Sessions Court, after examining the order of the trial court as well as after hearing both the sides,

allowed the appeal with the direction for restoration of the property to the appellants. In doing so, it gave the following findings/reasons:-

(a) The property was initially owned by Kartar Singh's father. It was sold to Gagan Naresh Chadha, Pawan Chadha and Vinay Fotedar who in turn sold the property to the wife of Major Murlidhar and his mother by registered sale deed dated 13.03.1989. On that date, possession was handed over to the purchasers. They constructed the boundary wall, two rooms, etc. out of their own funds and appointed a chowkidar to protect the property.

(b) Kartar Singh did not challenge the sale deed dated 13.03.1989 or the possession of Major Murlidhar and his wife. Therefore, the title to the property as well as physical possession of the respondents in the present revision petition remained undisputed.

(c) After the FIR was registered against Kartar Singh, his son and father for criminal trespass, there was a trial in the course of which evidence was recorded. Kartar Singh was held guilty of the offence u/s 448 of the IPC.

(d) The reason given by the MM that there was no allegation of threat or use of force while trespassing is bad in the light of the evidence led by PW-3, PW-4 and PW-5 during the trial. Even in the complaint, it was alleged that the complainant was the owner and in possession of the plot in question and proceedings u/s 145 Cr.P.C. were pending before the Court of SDM (South). The complaint also alleged that despite objections, Kartar Singh, his father and son had taken possession of the plot in question and kept some goonda elements. This itself showed that there was threat and application of force by Kartar Singh and the other accused. PW-3 i.e. Major Murlidhar deposed during the trial that the accused had forcibly taken possession of the plot with the help of goondas. His wife Kamlesh, PW-4 deposed to the same effect. Constable Balraj Singh, PW-5, deposed that Kartar Singh was arrested inside the plot; there were three or four persons with the accused and when the police reached the plot, they ran away. These events also supported the allegation of threat and use of force while trespassing, which the MM had failed to note.

(e) It was not necessary, as opined by the MM, that there should be a threat or intimidation in the presence of the owner. The rightful owners had constructed a boundary wall, gate, two rooms and also put up a pump in the plot and had locked the gate. A chowkidar had also been appointed. These are all circumstances which indicated that possession of the property could not have been taken by Kartar Singh without the use of force.

(f) The MM was not right in saying that there was no use of force or criminal intimidation, which is opposed to the evidence of PW-3, PW-4 and PW-5 in the course of the trial.

(g) Once a person is punished u/s 448 of the IPC, that shows that he committed the offence of house trespass and hence threat and application/use of force is inherent in the conviction.

5. For the aforesaid reasons the Sessions Court allowed the appeal and set-aside the order of the MM passed on 30.01.2013 and directed the restoration of the possession of the property to the appellants.

6. Against the aforesaid order passed by the Sessions Court, Criminal Appeal No. 745/2013 was filed by Kartar Singh before this Court. However, the appeal was dismissed as withdrawn, with liberty to initiate appropriate proceedings in accordance with law, by an order passed by a Single Judge (Siddharth Mridul, J.) on 30.05.2013.

7. Thereafter Kartar Singh filed the present Criminal Revision Petition praying that the order passed by the Sessions Court on 22.05.2013 may be set-aside.

8. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent who is present on advance notice. The object and purpose of section 456(1) are to prevent any person gaining wrongful possession of the land by his own unlawful and forcible acts. It was so held by the Madras High Court (Horwill, J.) in [M.V. Berankutty Haji Vs. C.I. Raman and Others](#), . Taking note of this judgment, a learned Single Judge (A. Narayana Pai, J.) of the Mysore High Court in [Alakal Senappa and Others Vs. State of Mysore and Another](#), held as follows:-

In other words the principle of civil law that a person in peaceful possession of land should be protected against dispossession by requiring whoever claims the right to possession against him to go to a competent court and dispossess him only in due course of law is sought to be enforced by empowering criminal courts under S. 522 to direct restoration of possession with a view to see that no man flouts the law and relies upon physical force to achieve his ends.

9. The more important observation in the Mysore case is what appears in the second sub-para of paragraph 10 of the judgment. The learned Single Judge observed: "However, the evidence which supports the conviction will in a large number of cases support the order u/s 522 also".

10. Similar observations were made by a learned Single Judge of this Court (Malik Sharief-ud-din, J.) in [Prem Chand Sharma Vs. State \(Delhi Admn.\) and another](#), . The learned Judge observed that the policy of the legislature manifestly seems to be that nobody should be allowed to thrive on his criminal and wrongful acts.

11. Before making an order u/s 456(1) of the Cr.P.C. the following three conditions have to be satisfied: -

(1) The accused must be convicted of an offence attended by criminal force or show of force or by criminal intimidation;

(2) the court must be of the opinion that the accused dispossessed another person of immoveable property by such force, show of force or criminal intimidation, and

(3) the court, in the circumstances of the case must think fit to make an order for restoration of possession. The first two conditions must necessarily be satisfied before an order can be made and the third condition merely invests the court with the discretion whether or not to make an order.

12. The best point in support of the respondents before me is that there was an order of conviction, convicting Kartar Singh u/s 448 of the IPC and that the said order has not been appealed against. The observations of the Mysore High Court (supra) to the effect that the evidence which supported the conviction will also support the order u/s 456(1) of the Cr.P.C. are apposite to the present case. It is difficult to see how in the face of the order of conviction, it can at the same breath be said that the offence was committed without criminal force or show of force or criminal intimidation. The learned counsel for the respondents submitted, and in my opinion rightly, that the conviction u/s 448 is for house trespass which inherently involves criminal trespass; the definition of criminal trespass u/s 441 of the IPC necessarily involves intimidation and, therefore, the impugned order, in so far as it finds that Kartar Singh did use criminal force or show of force or criminal intimidation, cannot be faulted. Apart from this, the Sessions Court is also right, in my opinion, in holding that there was enough evidence led before the trial court to show that the respondents were dispossessed of the plot by use of force. It is at this juncture necessary for me to point out that u/s 456(1), it is not necessary that such criminal force or show of force or criminal intimidation should have been simultaneous with the dispossession of the immoveable property. As pointed out by the Mysore High Court in the judgment cited (supra), it is enough that the dispossession is "attended by force or show of force or intimidation". According to the Mysore High Court, these words "may include not only an act done simultaneously with another act, but also an act done immediately after another act. So, if the commission of an offence is immediately or shortly afterwards followed by force or show of force or intimidation, the case will be covered by this section". Thus, all that is required is that the force, show of force or intimidation referred to in the section must be so connected to the dispossession as to constitute more or less a single event or a single transaction.

13. It is in the aforesaid light that we have to approach the evidence led in this case during the trial of Karatar Singh which ended in his conviction. Major Murlidhar (PW-3) had deposed during the trial that threats were extended to him by Kartar Singh. The MM in his order on the application u/s 456(1) has observed that Major Murlidhar did not say that the threats were made to him during the course of the commission of the offence. This overlooks the statement of PW-3 that in the earlier 2-3 days he had come to know that the plot had been wrongfully captured ("kabza") by Kartar Singh, his father and son. PW-3 had also deposed that when he visited the

plot he found that the accused persons had forcibly taken possession of the plot with the help of goondas. It must be remembered - this aspect has been taken note of by the Sessions Court - that the plot in question was secured by a compound wall, a gate and a lock and there was also a chowkidar to look after the same; but despite all this security, the accused persons had taken possession of the property by acts which inherently involved the use of force or show of force or criminal intimidation. Moreover, constable Balraj Singh (PW-5) had deposed that accused Kartar Singh was arrested inside the plot and at that time three or four persons who were with him ran away on seeing the police. I do not see how any inference is possible, other than the inference that Kartar Singh had undoubtedly used force or show of force or intimidation while dispossessing the respondents of the property. I now turn to the authorities cited by the learned counsel for the petitioner. In *Subhan vs. State*, 1974 Criminal Law Journal 731, the Allahabad High Court was concerned with a case where it was evident from the allegations in the complaint as well as the evidence that the applicant had entered the premises with the consent and permission of the person in occupation on the assurance of vacating the premises within one week, which he failed to comply with. There was no evidence to support the allegation against the applicant in that case that he and his five companions used criminal force and intimidated the complainant. In fact, the applicant was acquitted of those charges. There was, therefore, no question of any criminal force or show of force or criminal intimidation having been employed by the applicant against the complainant to enter the premises. The applicant was also acquitted of the charge u/s 448 of the IPC. The Allahabad High Court, therefore, held that the applicant, who in that case had been evicted by an order passed by the Magistrate u/s 522(1) of the Cr.P.C., 1908, should be put back in possession of the premises. The facts are completely different in the Allahabad case. In [Pargan Chandra Vs. State of U.P.](#), the Allahabad High Court held that if there is no finding or evidence on record to show that any criminal force was exercised by the accused in carrying out construction upon the property, the accused cannot be directed to demolish the construction. In that case, it was a matter of evidence and nothing was found against the accused to show that while putting up the construction in the property, he had used any force. This case is also one which turned on the facts and evidence. In contrast, the case before me is one where there is an order of conviction u/s 448 of the IPC for house trespass which involves intimidation in taking possession of any property. The conviction order has become final. Moreover, there is ample evidence in the present case to show that the dispossession of the property from the respondents herein was attended by criminal force or show of force or criminal intimidation by Kartar Singh. In these circumstances, I am satisfied that the Additional Sessions Judge has come to the right conclusion in directing the appellant to restore the possession of the property to the respondents, after evicting by force, if necessary, any other person who may be in possession of the property, with the help of the local police, if required.

The petition is devoid of merit and is dismissed and consequently Crl. M.A. No. 9247/2013 stands disposed of.